TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 124.

LOUISE M. MATTESON AND CHARLES D. MATTESON, PLAINTIFFS IN ERROR,

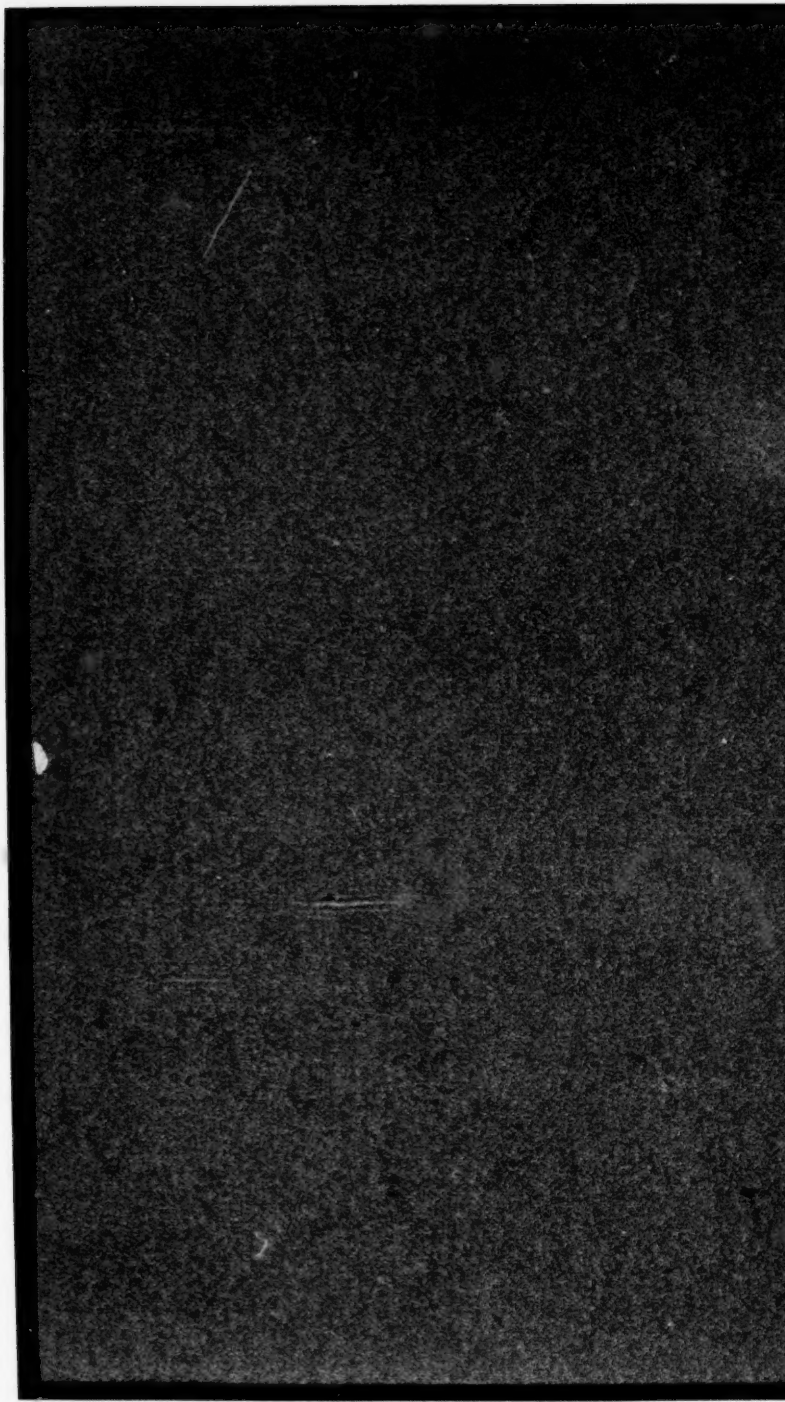
vs.

WILLIAM H. DENT, AS RECEIVER OF THE FIRST NATIONAL BANK OF DEDORAH, IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED AUGUST 20, 1900.

(16,988.)



(16,968.)

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INDEX.

	Original.	Print.
Citation and service	1	1
Writ of error	3	1
Petition for writ of error	7	3
Order allowing writ of error	8	4
Assignment of errors	10	4
Bond on writ of error	13	5
Transcript from district court of Ramsey county	15	7
Demurrer	15	7
Order overruling demurrer	15	7
Complaint	16	8
Exhibit A—Certificate of stock	23	11
Answer	23	12
Motion for judgment	25	12
Order for judgment	25	13
Judgment	27	14
Notice of appeal	28	14
Syllabus (No. 215)	29	15
Opinion (No. 215)	30	15
Syllabus (No. 166)	32	16
Opinion (No. 166)	33	16
Judgment	38	19
Order for judgment	39	20
Minutes of argument	40	21
Clerk's certificate	42	21

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 20, 1899.

1 The United States of America to William H. Dent, as receiver of the First National Bank of Decorah, Iowa, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., on the 15th day of August, 1898, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Minnesota, wherein Louise M. Matteson and Charles D. Matteson are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 16th day of July, A. D. 1898.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

Due and personal service of the foregoing citation on the 16th day of July, A. D. 1898, by delivery of a true copy thereof, is hereby admitted.

GEORGE R. O'REILLY,
FITZHUGH BURNS,
O'REILLY & BURNS,
Attorneys for William H. Dent, as Receiver of First National Bank of Decorah, Iowa, Defendant in Error.

2 [Endorsed:] 11102. Original. Supreme Court of the United States. William H. Dent, as receiver, defendant in error, *vs.* Louise M. Matteson *et al.*, plaintiffs in error. Citation to defendant in error. Filed Jul- 16, 1898. Darius F. Reese, clerk. Edmund S. Durment, attorney for plaintif-s in error; office, 904 New York Life building; residence, 825 Osceola avenue, St. Paul, Minn.

3 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William H. Dent, as receiver of the First National Bank of Decorah, Iowa, plaintiff, respondent, and Louise M. Matteson and Charles D. Matteson, defendants, appellants, wherein was drawn in question the construction of certain statutes of the United States, and the decision was against the right, privilege, and exemption specially set up and claimed under said statutes of the United States by said defendants, appellants, a

manifest error hath happened, to the great damage of said Louise M. Matteson and Charles D. Matteson and each of them, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on or before the 13th day of August, 1898, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, the 15th day of July, A. D. 1898.

4 Issued at office, in St. Paul, Minnesota, with seal of the circuit court of the United States for the district of Minnesota.

{ Seal U. S. Circuit Court, Dist. of Minnesota, Third Division. }

HENRY D. LANG,
Clerk of Circuit Court of the United States for District of Minnesota,
By LOUISE B. TROTT, *Deputy.*

Allowed by—
CHARLES M. START,
Chief Justice of Supreme Court of Minnesota.

5 STATE OF MINNESOTA, *Supreme Court,* } ss:

In obedience to the command of the annexed writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the therein-entitled cause, with all things concerning the same.

____ ____,
Clerk of the Supreme Court of the State of Minnesota.

6 [Endorsed:] 11102. Supreme Court of the United States. William H. Dent, as receiver, defendant in error, *vs.* Louise M. Matteson *et al.*, plaintiffs in error. Writ of error. Filed Jul-16, 1898. Darius F. Reese, clerk. Edmund S. Durment, attorney for pl'ffs in error; office, 904 New York Life building; residence, 825 Osceola avenue, St. Paul, Minn.

7 STATE OF MINNESOTA :

Supreme Court.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa, Plaintiff, Respondent,
vs.
LOUISE M. MATTESON, CHARLES D. MATTESON, ET AL., Defendants, Appellants.

And now come Louise M. Matteson and Charles D. Matteson, defendants and appellants herein, and jointly and severally say that on the 15th day of July, A. D. 1898, the above-named court, the supreme court of the State of Minnesota, entered judgment in the above-entitled action against said Louise M. Matteson and Charles D. Matteson and each of them in favor of William H. Dent, as receiver of the First National Bank of Decorah, Iowa, the plaintiff and respondent herein, for thirty-seven (37) dollars, costs and disbursements, and affirming the judgment entered in said action by the district court for Ramsey county, Minnesota, in favor of said plaintiff and against said Louise M. Matteson and Charles D. Matteson and each of them: that said judgment, so entered in the supreme court of the State of Minnesota, was on the merits and is a final judgment, and said supreme court of Minnesota is the highest court of law or equity of the said State in which a decision could be had in said suit; that in said action there was drawn in question the construction of the provisions of the statutes of the United States with reference to the liability of holders of stock in national banking associations for the contracts, debts, and engagements of such association and with reference to the transfer of the capital stock of such associations, and said defendants, appellants, Louise M. Matteson and Charles D. Matteson, claimed certain rights under and by virtue of said statutes, and especially set up and claimed
8 that upon the facts alleged in the complaint in said action there was not, under or by virtue of said statutes, any such debt or liability as was sought to be enforced in such action or as was adjudged by said judgment, and that they were not liable in said action under the said statutes, but, by virtue of the said statutes of the United States, they were, upon the facts stated in the complaint in said action, exempt from the liability sought to be enforced therein and adjudged against them in such action, and the decision of said supreme court of the State of Minnesota in said action was adverse to the claims of said defendants, appellants, in that behalf and denied the rights and exemption so claimed by them under the said statutes of the United States.

That in said cause and the rendering of judgment therein certain errors were committed, to the prejudice of said defendants, appellants, and to each of them; all of which will more in detail appear from the assignment of errors which is filed at the same time with this petition.

Wherefore said defendants, appellants, and each of them pray

that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a copy of the records, proceedings, and papers in said cause, duly authenticated, may be sent to said United States Supreme Court.

LOUISE M. MATTESON,
CHARLES D. MATTESON,
Defendants, Appellants,
By EDMUND S. DURMENT,
Their Attorney.

On this 15th day of July, 1898, a writ of error is allowed, as prayed for in the foregoing petition.

CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

9 [Endorsed:] State of Minnesota, supreme court. William H. Dent, as receiver, etc., respondent, *vs.* Louise M. Matteson *et al.*, appellants. Petition for and allowance of writ of error. Edmund S. Durment, attorney for appellants; office, 904 New York Life building; residence, 825 Osceola avenue, St. Paul, Minn.

10 STATE OF MINNESOTA:

Supreme Court.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa, Plaintiff, Respondent,
vs.
LOUISE M. MATTESON, CHARLES D. MATTESON, ET AL., Defendants, Appellants.

The defendants, appellants, in the above-entitled action jointly and severally say that in the records and proceedings in said action and also in the rendering of judgment therein there is manifest error in the particulars hereinafter specified:

1. Defendants, appellants, claimed that only those persons who were shareholders in the national bank association at the time it became insolvent are, under the statutes of the United States, liable to pay the assessment sought to be recovered in the action; which claim was overruled and denied by the decision and judgment made and rendered in the above-entitled action.

2. Defendants, appellants, claimed that the provision of the United States statutes for transferring capital stock of national banking associations on the books of such associations does not have reference to nor apply in cases where the title is transferred by operation of law in the course of administration proceedings upon the estate of a deceased shareholder; that the death intestate of one who is a shareholder, appearing on the books of the bank to be such, and a completed administration of his estate by which the administrator

is discharged and the entire estate of the deceased shareholder, including the bank stock, distributed to and vested in the persons whom the law designates, releases the deceased and his estate
11 from liability for the assessment, notwithstanding that the stock continues registered on the books of the bank in the name of the deceased, provided the bank was solvent at the death of the shareholder and continued to be so until after the completion of the administration on his estate; that in any event such death and completed administration, the bank then being solvent, released the deceased and his estate from liability to be assessed to pay debts of the association incurred subsequent to such death and completed administration, even though the stock on the books of the association was not transferred from the name of the deceased, and no such transfer had been requested by those to whom the stock had passed; which claims and each of them were overruled and denied by the decision and judgment made and rendered in said action.

3. Defendants, appellants, claimed that the liability to pay an assessment on the shares of stock of an insolvent national bank is created and to be determined by the statutes of the United States, and that, on the facts stated in the complaint, under the provisions of the United States statutes no such liability exists as is sought to be enforced in said action or as is adjudged in and by said judgment; which claims and each of them were overruled and denied by the decision and judgment made and rendered in said action.

Wherefore the said Louise M. Matteson and Charles D. Matteson and each of them pray that the said judgment of the supreme court of the State of Minnesota be reversed.

EDMUND S. DURMENT,
Attorney for said Louise M. Matteson and Charles D. Matteson, Defendants, Appellants.

12 [Endorsed:] 11102. State of Minnesota, supreme court. William H. Dent, as receiver, etc., respondent, *vs.* Louise M. Matteson *et al.*, appellants. Assignments of error.
Endorsed: Filed July 15, 1898. D. F. Reese, clerk.

13 Supreme Court of the United States.

STATE OF MINNESOTA:

Supreme Court.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa, Respondent, Defendant in Error,
vs.
LOUISE M. MATTESON and CHARLES D. MATTESON, Appellants, Plaintiffs in Error,

Know all men by these presents that we, Charles D. Matteson, as principal, for himself and on behalf of said Louise M. Matteson, and Walter H. Dickerman and Edward J. Hodgson, as sureties, all of

the city of St. Paul, county of Ramsey and State of Minnesota, are held and firmly bound unto the above-named William H. Dent, as receiver of the First National Bank of Decorah, Iowa, in the sum of fifteen hundred dollars ($1,500), to be paid to the said William H. Dent, as such receiver; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of July, in the year of our Lord one thousand eight hundred and ninety-eight (1898).

Whereas the above-named Charles D. Matteson and Louise M. Matteson have sued out a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of the State of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named Charles D. Matteson and Louise M. Matteson shall prosecute their said writ to effect, and if they fail to make their said plea good shall answer all damages and costs, then this obli-
14 gation shall be void; otherwise the same shall be and remain in full force and virtue.

In testimony whereof we have hereunto set our hands and seals on this 15th day of July, A. D. 1898.

CHARLES D. MATTESON. [SEAL.]
WALTER H. DICKERMAN. [SEAL.]
EDWARD J. HODGSON. [SEAL.]

Signed, sealed, and delivered in presence of—
J. P. DEVELBY.
J. Q. HAAS.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Be it known that on this 15th day of July, A. D. 1898, came before me personally Charles D. Matteson, Walter H. Dickerman, and Edward J. Hodgson, to me well known to be the same persons who executed the foregoing bond, and each severally acknowledged the same to be his own free act and deed.

[NOTARIAL SEAL.] J. Q. HAAS,
Notary Public, Ramsey County, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Walter H. Dickerman and Edward J. Hodgson came personally before me, and being duly sworn, each for himself, doth depose and say that he is the surety above named and a resident and freeholder of the State of Minnesota, and worth the sum of three thousand dollars ($3,000) over and above his debts and liabilities and exclusive of his property exempt from execution.

WALTER H. DICKERMAN.
EDWARD J. HODGSON.

Subscribed and sworn to before me on this 15th day of July, A. D. 1898.

[NOTARIAL SEAL.] J. Q. HAAS,
Notary Public, Ramsey County, Minnesota.

[Endorsed:] Copy. Supreme Court of U. S. Dent *vs.* Matteson. Supersedeas and cost bond on writ of error. The within bond is hereby approved this 16th day of July, 1898. Chas. M. Start, chief justice of the supreme court of State of Minnesota.

15 *Demurrer.*

(Title of Cause.)

Now come the defendants Louise M. Matteson and Charles D. Matteson and severally demur to the complaint in the above-entitled action and assign for ground of demurrer that said complaint does not state facts sufficient to constitute a cause of action against them or either of them.

EDMUND S. DURMENT,
Attorney for Defendants Louise M. Matteson and Charles D. Matteson.

Order Overruling Demurrer.

(Title of Cause.)

At a special term of this court, held on Saturday, the fifth day of June, A. D. 1897, at the court-house in the city of St. Paul, county of Ramsey, and State of Minnesota, the above-entitled matter came on for hearing upon the demurrers of Louise M. Matteson and Charles D. Matteson, two of the above-named defendants, to the complaint of the plaintiff herein, Messrs. O'Reilly and Burns appearing for the plaintiff and E. S. Durment, Esq., for the defendants demurring, and after hearing arguments of the counsel for the above-named parties and the court being fully advised in the premises:

It is hereby ordered, that the said demurrers be and the same are hereby overruled, and that the said defendants have twenty days from and after the date of this order within which to serve and file their answers to the said complaint.

(Signed) JOHN W. WILLIS,
District Judge.

Dated and filed June 5th, 1897.

16 STATE OF MINNESOTA, }
County of Ramsey. }

District Court, Second Judicial District.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Plaintiff,
vs.
LOUISE M. MATTESON, HERBERT H. MATTESON, SUMNER W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson, and Claire Louise Matteson, Defendants.

The plaintiff, for his complaint in the above-entitled action, respectfully states and shows to the court:—

That the First National Bank of Decorah is a national banking association, created, organized and existing under and by
17 virtue of the laws of the United States, and having its principal place of business in the city of Decorah and State of Iowa;

That on and prior to the tenth day of November, A. D. 1896, the said First National Bank of Decorah had a capital stock of seventy-five thousand dollars ($75,000), being seven hundred and fifty (750) shares of one hundred dollars ($100) each;

That on the said tenth day of November, A. D. 1896, the said First National Bank of Decorah became and was insolvent, and was by the Comptroller of the Currency of the United States closed, and was not allowed to transact any further business;

That thereafter and on the twenty-fourth (24th) day of November, A. D. 1896, the plaintiff above named was by the Comptroller of the Currency of the United States duly appointed and commissioned under and by virtue of the laws of the United States as receiver of the said First National Bank of Decorah, and the said plaintiff thereupon duly qualified as such receiver, and ever since said twenty-fourth day of November, A. D. 1896, has been and still is the duly appointed, qualified and acting receiver of said banking association.

That thereafter and on the eleventh (11th) day of January, A. D. 1897, the said Comptroller of the Currency of the United States determined that in order to pay the liabilities of the said bank and close its affairs, it was necessary to enforce the individual liability of the shareholders of the said banking association under section 5151 of the Revised Statutes of the United States, and thereupon made an assessment and requisition upon the said shareholders of the said First National Bank of Decorah, for the sum of seventy-five thousand dollars ($75,000), to be paid by the said share-
18 holders and each thereof ratably on or before the eleventh day of February, A. D. 1897, in the proportion of one hundred dollars ($100) upon each and every share of the capital stock of said banking association held or owned by each of the said shareholders respectively, at the time of its failure, to wit: the tenth day of November, A. D. 1896, and the said plaintiff was at the same

time authorized and directed by the said Comptroller of the Currency of the United States to take all necessary proceedings, by suit or otherwise, to enforce to that extent the individual liability of the said shareholders.

That theretofore and on or about the 31st day of October, A. D. 1864, Sumner W. Matteson subscribed for and became the owner of ten shares of the capital stock of said banking association, and the said First National Bank of Decorah then and thereupon issued to him its certain certificate of stock, numbered twenty-four (24), representing the said ten shares of its capital stock, a copy of which said certificate is hereto attached, marked "Exhibit A" and is hereby made a part hereof as fully as though recited herein at length.

That thereafter and on or about the twenty-second (22nd) day of July, A. D. 1895, the said Sumner W. Matteson died intestate, a resident and citizen of the city of St. Paul, county of Ramsey and State of Minnesota, and leaving a large amount of property therein, including the said ten shares of the capital stock of said First National Bank of Decorah, of which said Sumner W. Matteson remained the owner and holder up to and including the said day of his death, and leaving surviving him, his widow, the defendant,

19 Louise M. Matteson, and the following sons and daughter as his only heirs, the defendants Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson, all of which said heirs were then and are now over twenty-one years of age, save and except Max Matteson and Claire Louise Matteson, who are aged about nineteen and twelve years respectively.

That thereafter and on or about the fifth day of August, A. D. 1895, Louise Matteson, the widow of the said deceased, duly filed a petition in the probate court of Ramsey county, Minnesota, stating that Sumner W. Matteson died intestate on the 22nd day of July, A. D. 1895, in the city of St. Paul, county of Ramsey and State of Minnesota, giving the names, ages and residences of the heirs of said deceased, as herein stated: that in and by the said petition the said petitioner stated that the personal estate of said Sumner W. Matteson, deceased, was of the probable value of twenty-five thousand dollars ($25,000), and the real estate of which the said deceased died seized of the probable value of sixty thousand dollars ($60,000), and asked that the Security Trust Company of St. Paul, Minnesota, a corporation duly created, organized and existing under and by virtue of the laws of the State of Minnesota, be appointed the administrator of the estate of said Sumner W. Matteson, deceased.

That thereafter such proceedings were had in the said matter that on the third day of September, A. D. 1895, an order was duly entered by the said probate court granting the said petition and appointing the said Security Trust Company administrator of the estate of Sumner W. Matteson, deceased, and letters of administra-

20 tion of the said estate were duly issued to the said Security Trust Company and the said Security Trust Company thereupon and on the said third day of September, A. D. 1895, duly qualified as such administrator and entered upon the duties

of its said trust. That in the inventory duly filed by the said administrator on the thirtieth day of September, A. D. 1895, showing the estate, real and personal, of the said Sumner W. Matteson, deceased, the stock and property of the said Sumner W. Matteson in the said banking association was duly inventoried, and that the said estate of Sumner W. Matteson, deceased, as shown by the said inventory and by the appraisal thereof far exceeded in value the sum of one hundred thousand dollars ($100,000), after the payment of his debts and liabilities and the expenses of the administration of his said estate. That on the third day of September, A. D. 1895, an order was duly entered limiting the time within which creditors could present their claims against the said estate to six months from and after the date of the said order, and fixing Monday, the sixth day of April, A. D. 1896, at ten o'clock in the forenoon of the said day as the time to examine and adjust the said claims. That on the said third day of September, A. D. 1895, an order was duly entered in the said probate court limiting the time to pay debts of the said estate to twelve months from and after the date of the said order.

That thereafter such proceedings were had and the said Security Trust Company so administered the said estate, that its final account as such administrator was duly rendered and allowed by the said probate court, and on the twenty-seventh (27th) day of April, A. D. 1896, a final decree was duly entered distributing all the estate, real, personal and mixed, of the said Sumner W. Matteson, deceased, including the said ten
21 shares of the capital stock of the First National Bank of Decorah, all of the said property exceeding in value the sum of one hundred thousand dollars ($100,000) to the said widow and children of the said Sumner W. Matteson, deceased, as follows, to wit: An undivided one-third thereof to Louise M. Matteson, the said widow, and an undivided one-ninth thereof to each of the said children of the said Sumner W. Matteson, deceased, being the said defendants, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson, but that the said ten shares of the said capital stock were never transferred upon the books of the said First National Bank of Decorah, in accordance with the statute in such case made and provided, nor pursuant to the provisions and conditions contained in the said certificate of said stock, nor did the administrator of the said estate of Sumner W. Matteson, deceased, nor did his said heirs nor any thereof ever take any steps to notify the said banking association of the said transfer of the said shares of capital stock, nor did they or any of them ever deliver the said certificate of stock to said bank for cancellation that new certificates might and should be issued to the said heirs in lieu thereof, and that the said estate of Sumner W. Matteson, deceased, might be relieved from liability thereon.

Plaintiff further alleges that in and by and pursuant to the said final decree so duly entered by the probate court within and for the county of Ramsey and State of Minnesota on the 27th day of April,

A. D. 1896, all of the estate of the said Sumner W. Matteson, deceased, real, personal and mixed, passed out of the hands of the said Security Trust Company as administrator of the said estate, and
22 that the said Security Trust Company, as such administrator, has no funds nor assets in its hands with which to pay the said assessment of one hundred dollars ($100) per share on the said ten shares of the capital stock of the said First National Bank of Decorah, so levied on the eleventh day of January, A. D. 1897, nor had it such funds or assets on the said date last mentioned, and that the widow and each one of the heirs of the said Sumner W. Matteson, deceased, received in real estate and other property so distributed to them and so descending to them as said heirs, exceeding the value of one hundred thousand dollars ($100,000).

That said plaintiff has given due notice of the said assessment to the said defendants, and each thereof, and to the Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased, and that the said defendants and each of them have wholly failed and neglected to pay the same or any part thereof, and that there is now due and owing to the said plaintiff as the receiver of the First National Bank of Decorah, the sum of one thousand — ($1,000);

Wherefore, plaintiff prays that an accounting be taken of the assets and property of the said Sumner W. Matteson, deceased, which descended to and vested in the said widow and each of the said heirs of Sumner W. Matteson, deceased, and that plaintiff, as such receiver, have and recover of the said defendants the said sum of one thousand dollars ($1,000), and that the said Louise M. Matteson and each of the said heirs be decreed to pay to the said plaintiff as such receiver their proper proportion thereof, and that the plaintiff have such other and further relief as to the court may seem just and equitable.

O'REILLY & BURNS,
Attorneys for Plaintiff.

DAN. W. LAWLER, *Of Counsel.*

23 EXHIBIT A.

No. 24. First National Bank, Decorah, Iowa. 10 shares.

This is to certify that S. W. Matteson is entitled to ten shares of one hundred dollars each of the capital stock of the First National Bank of Decorah, transferable only upon the books of said bank, by him or lawful representative on surrender of this certificate.

In witness whereof, the president and cashier have hereunto affixed their signatures, under the corporate seal of the bank, this 31 day of October, A. D. 1864.

S. W. MATTESON, *Cashier.*
JAMES H. EASTON, *President.*

[25-c. revenue stamp. Corporate seal of bank.]

(Endorsed.)

"For value received, — hereby sell, transfer, and assign to —— ——, the shares of stock above mentioned, and authorize — to make the necessary transfer on the books of the bank.

Witness my hand and seal this — day of ——, 18—.

—— ——."

Answer.

For joint and several answer to complaint in the above-entitled action the defendants, Louise M. Matteson and Charles D. Matteson, show to the court and say:

That their liability and the liability of each of them, (if any such liability there be) to pay the assessment mentioned in said
24 complaint or any part of such assessment depends wholly upon the statutes of the United States enacted with reference to the liability for, and the collection of such assessments, is limited by, and is only such as is created by, the provisions of such statutes, and such statutes do not provide for, nor create, any such liability against these defendants or either of them as is sought to be enforced in said action, and the facts set forth in said complaint do not, under the statutes of the United States, create any such liability upon the part of these defendants or either of them as is sought to be enforced in said action; that a judgment in said action granting the relief asked for in said complaint against these defendants, or either of them, would be repugnant to the Constitution and the laws of the United States, and would operate to deprive them and each of them of a right given them by the statutes of the United States above referred to;

That the statutes of the State of Minnesota under which said action is brought have no application, and do not by their terms purport to create any liability against the defendants or either of them arising out of the facts stated in the complaint, and if such statutes do by their terms or intent purport or intend to create any such liability they are void and of no effect because repugnant to, conflicting with, and in contravention of, the above-mentioned statutes of the United States, and the provisions of the Constitution of the United States authorizing the enactment of said statutes of the United States.

Wherefore it is prayed that plaintiff take nothing by his said action.

EDMUND S. DURMENT,
Attorney for Defendants.

(Duly verified.)

25 *Motion for Judgment.*

Notice is hereby given that at a special term of this court, to be held at the court-house in the city of St. Paul, county of Ramsey and State of Minnesota, on Saturday, the 19th day of February, A. D. 1898, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, the plaintiff above named will

move this court upon all the files of this action that judgment upon the pleadings in the above-entitled action be entered against Louise M. Matteson and Charles D. Matteson, two of the above-named defendants, as demanded in his complaint in said action.

O'REILLY & BURNS,
Attorneys for Plaintiff.

Order for Judgment.

At a special term of this court, held on Saturday, the nineteenth day of February, A. D. 1898, at the court-house in the city of St. Paul, county of Ramsey and State of Minnesota, the above-entitled matter came on for hearing upon motion of the plaintiff herein for judgment upon the pleadings against Louis M. Matteson and Charles D. Matteson, two of the defendants above named, as demanded in his complaint in this action, Messrs. O'Reilly and Burns appearing for the plaintiff and E. S. Durment, Esq., appearing for the said two defendants; and after hearing arguments of the respective counsel and the court being fully advised in the premises, and it appearing from the files of the said action that the said Louise M. Matteson and Charles D. Matteson were the only ones of the above-named defendants who were duly served with summons in the said action, and that service of summons was never secured
26 upon any other of the said defendants, and it further appearing that the said Louise M. Matteson and Charles D. Matteson, and each of them, received as their proper proportion of the assets of the estate of Sumner W. Matteson, deceased, to exceed the value of ten thousand dollars ($10,000).

It is hereby ordered that judgment be entered in favor of the said plaintiff and against the said defendants, Louise M. Matteson and Charles D. Matteson, and each of them, in the sum of one thousand dollars ($1,000), with interest thereon from and after the eleventh day of February, A. D., 1897, at the rate of seven per cent. per annum, together with his costs and disbursements of this action.

Dated February 23d, 1898.

JOHN W. WILLIS,
District Judge.

27 STATE OF MINNESOTA, }
County of Ramsey. }

District Court, Second Judicial District.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Plaintiff,

vs.

LOUISE M. MATTESON, HERBERT H. MATTESON, SUMNER W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson, and Claire Louise Matteson, Defendants.

Judgment.

Pursuant to the order for judgment duly filed in the above-entitled action on the 23d day of February, A. D. 1898.

Now, on motion of Messrs. O'Reilly & Burns, said attorneys, it is hereby adjudged that the plaintiff herein recover of said defendants Louise M. Matteson and Charles D. Matteson and each of them, the sum of ten hundred seventy-two and $\frac{72}{100}$ dollars damages, with eighteen and $\frac{60}{100}$ dollars costs and disbursements, amounting in all to $1,091.32.

Signed this 25th day of February, A. D. 1898.

EDWARD G. ROGERS, *Clerk.*

Endorsed: Filed 25th of February, 1898.

28 *Notice of Appeal.*

You will please take notice that Louise M. Matteson and Charles D. Matteson, two of the above-named defendants, jointly and severally appeal to the supreme court of the State of Minnesota from the judgment of this court in this action, entered on the 25th day of February, A. D. 1898, in favor of the above-named plaintiff, and against the said defendants, Louise M. Matteson and Charles D. Matteson, and each of them, for the sum of one thousand and ninety-one dollars and thirty-two cents ($1,091.32) damages and costs.

Dated March 2d, 1898.

EDMUND S. DURMENT,
Attorneys for Defendants Louise M. Matteson and Charles D. Matteson.

To Messrs. O'Reilly & Burns, attorneys for plaintiff, and Edward G. Rogers, clerk of the district court.

29 11102.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Respondent,
vs.
LOUISE M. MATTESON ET AL., Def'ts; LOUISE M. Matteson and Charles D. Matteson, Appellants.
} No. 215. Syllabus.

Dent *v.* Matteson *et al.*, 73 N. W. R., 416, adhered to. A judgment which is recovered and entered under Gen. St. 1894, sections 5918, 5920, and 5923, is proper, which provides that the plaintiff herein recover of L. M. M. and C. D. M. and each of them the sum of $1,072.72, damages and costs.

30 11102.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Respondent,
vs.
LOUISE M. MATTESON ET AL., Def'ts; LOUISE M. Matteson and Charles D. Matteson, Appellants.
} No. 215. Opinion.

This case was before this court upon a former appeal from an order overruling appellants' demurrer to the complaint.

Dent *v.* Matteson, 73 N. W. R., 416.

With one exception, the questions now before us were there discussed by counsel, and were determined by this court and became the law of the case, and which decision we now follow.

The exception relates to a matter of practice, viz., that it was error to enter judgment in the court below in favor of the plaintiff and against the defendants, Louise M. Matteson and Charles D. Matteson, and each of them in the sum of one thousand dollars, with interest and costs; but Gen. Stat. 1894, sec. 5918, provides that an action of this kind may be brought by a creditor against all of the next of kin jointly or against any one or more of them where one or more of them have secured a distributive share out of the estate, and section 5920 provides that when a recovery is had against any one of said next of kin he may maintain an action against all the other relatives of the testator to whom such assets have been paid, jointly or any one or more of them, for a just and equal contribution proportionately, and by section 5923, in case of judgment against several next of kin of a testator or against several legatees, the payment or satisfaction of the amount recovered against any

one of the defendants discharges such defendant and exonerates him and his property from the judgment. Under these provisions of the statute the judgment was properly entered.

Judgment affirmed.

BUCK, *J.*

31 [Endorsed:] No. 11102. State of Minnesota, supreme court. Wm. H. Dent, rec'r, etc., respondent, *vs.* Louise M. Matteson *et al.*, appellants. Copy opinion and syllabus.

Endorsed: Filed July 1st, 1898. D. F. Reese, clerk. April term, A. D. 1898. Buck, J.

32 10702.

STATE OF MINNESOTA:

Supreme Court, October Term, A. D. 1897.

WM. H. DENT, as Receiver of the First National Bank of Decorah, Respondent, *vs.* LOUISE M. MATTESON & CHAS. D. MATTESON, Appellants. } No. 166. Syllabus.

A stockholder of a national bank, who held ten shares of its stock, died; his estate was administered upon, and the assets, including said stock, were distributed to his widow, heirs, and next of kin, but the stock was never transferred on the books of the bank to either the administrator or the distributees. Thereafter the bank became insolvent, and the Comptroller of the Currency appointed a receiver for it and made an assessment on its stockholders, under section 5151, U. S. Rev. Stat., to pay its debts. In an action by the receiver against said distributees to recover of them the amount of said assessment on said ten shares—

Held, the claim was a contingent one, which did not become absolute until the bank had become insolvent, and, as this was after the time to file claims against the estate had expired, this action can be maintained under ch. 77, G. S. of Minnesota, against the distributees to recover to the extent of assets received by them, notwithstanding the provisions of sec. 5152, U. S. Rev. Stat.

Order affirmed.

33 10702.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

WM. H. DENT, as Receiver of the First National Bank of Decorah, Respondent, *vs.* LOUISE M. MATTESON ET AL., Appellants. } No. 166. Opinion.

Sumner W. Matteson died intestate July 22nd, 1895, and at the time of his death he was the owner of ten shares of the capital stock

of the First National Bank of Decorah, Iowa. He was a resident of this State, and letters of administration on his estate were issued by the probate court Aug. 5th. Thereafter, on Sept. 3rd, 1895, the time to file claims was limited to six months from that date. The time expired, and thereafter, on April 27th, 1896, the probate court made its final decree distributing all of the estate, inclusing these ten shares of stock, to the widow and children of the deceased, who are the defendants herein—an undivided one-third to the widow and an undivided one-ninth to each of the six children—and the estate so distributed was of the value of one hundred thousand dollars.

Thereafter, on Nov. 10th, 1896, the bank was insolvent and was closed by the Comptroller of the Currency. On Nov. 24th the plaintiff was appointed receiver by the comptroller, who thereafter, on Jan. 11th, 1897, made an assessment and requisition on each of the stockholders of the bank who was such Nov. 10th, 1896, to pay on or before Feb. 11th, 1897, the face value of his stock, and authorized and directed the receiver to collect and receive the amounts due on such assessment.

34 The face value of each share of the stock is $100, and the ten shares so held by the deceased at the time of his death have always been registered in his name on the books of the bank and have never been transferred on those books to these defendants. This action is brought to recover one-third of the amount of the assessment on these 10 shares from the widow and one-ninth of said amount from each of the other defendants. To the complaint which alleges all of the foregoing facts the defendants demurred on the ground that it does not state a cause of action, and appeal from an order overruling the demurrer.

It will be observed that the bank did not fail until nearly 16 months after the death of the deceased, eight months after the time to file claims against his estate had expired, and six months after the estate was distributed.

The claim here in question was a contingent claim, which did not become absolute until after the time to file claims had expired and the estate was distributed to the widow, heirs, and next of kin. Under these circumstances the plaintiff may maintain an action under ch. 77, G. S. 1894, against the distributees to recover of them the amount of the liability, not exceeding the amount of the distributive share received by each. Hantzch *v.* Massolt, 61 Minn., 362; Lake Phalen L. & I. Co. *v.* Lindeke, 68 N. W. R., 174.

Appellant contends that the comptroller's assessment must be against those who were shareholders at the time the bank failed; that the deceased was not then a shareholder, because he had been dead 16 months; that the administrator was not a shareholder, because the estate had been distributed and the administrator discharged; that the suit is not against these defendants as shareholders, but as distributees, under ch. 77, and that even if the suit was against them as shareholders, it could not be maintained because it does not appear that at the time of the failure of the bank they still owned the stock.

35 The stock was never registered on the books of the bank in their name. If the law is as appellant contends, it is very easy to evade all liability after the stockholder's death by simply administering the rest of his estate, distributing all the assets, discharging the executor or administrator, and neglecting to make any disposition whatever of the stock. In the meantime, the estate may have received dividends on the stock, so that, according to counsel's theory, it may receive all the benefits and escape all the burdens connected with the stock. We cannot hold that such is the law.

Sec. 5151, U. S. Rev. Stat., provides: "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares;"

Sec. 5152 provides: "Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name."

In Parker *v.* Robinson, 71 Fed., 256, 18 C. C. A., 36, it was held that judgment may be taken on the comptroller's assessment against the executor who had inventoried the stock in the probate court; that by virtue of said sec. 5151 such an executor becomes the stockholder, but that by virtue of sec. 5152 the judgment can only be enforced against the assets of the estate in his hands.

It seems to us that sec. 5152 is merely declaratory of what the courts would have held without the aid of that section, except
36 that in the Federal courts it may in some cases have an effect in determining whether an action at law or a bill in equity should be brought against the executor. See Witters *v.* Sowles, 32 Fed., 130. But that question of practice will not arise under our procedure. Then, we cannot hold that the liability of the administrator and the distributees in such a case as the one at bar would be any different if sec. 5152 had never existed. Of course, the result must be worked out in the State courts by a procedure differing materially from that in use in the Federal courts.

We are clearly of the opinion that, as a general rule, the statutory or constitutional double liability of a stockholder survives his death, whether the corporate indebtedness was incurred before or after his death, and whether the corporation becomes insolvent before or after his death. One of the very objects of organizing corporations is to prevent the death of any of its members from interfering with the business or affairs of the concern. The stockholder's contract does not contemplate a hiatus in liability resulting from his death. Whether he is living or dead, there may be no assets out of which the liability can be satisfied; but the liability contracted for by the stockholder does not terminate with his death. His is a continuing

contract. He contracts for a liability which is to continue, at least, until his stock is transferred to another on the books of the company or until such a transfer is rightfully demanded. We are also of the opinion that sec. 5152 has not changed these rules as applied to the stockholders of national banks. So far as what is here said is inconsistent with certain dicta in Witters *v.* Sowles, *supra*, we are not disposed to follow that case, and do not believe that the federal court or courts of last resort will do so.

The order appealed from is therefore affirmed.

CANTY, *J.*

37 [Endorsed:] No. 10702. State of Minnesota, supreme court. Wm. H. Dent, rec'r, etc., respondent, *vs.* Louis M. Matteson *et al.*, appellants. Copy opinion and syllabus.

Endorsed: Filed December 24th, 1897. D. F. Reese, clerk. October term, A. D. 1897. Canty, J.

38 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa, Respondent,
vs.
LOUISE M. MATTESON ET AL., Defendants; LOUISE M. Matteson and Charles D. Matteson, Appellants. } No. 215.

Pursuant to an order of court duly made and entered in this cause on the fifteenth day of July, A. D. 1898—

It is here and hereby determined and adjudged that the judgment of the court below herein appealed from, to wit, of the district court of the second judicial district, sitting within and for the county of Ramsey, be, and the same hereby is, in all things affirmed, and it is further determined and adjudged that the respondent above named do have and recover of said Louise M. Matteson and Charles D. Matteson, appellants herein, the sum and amount of thirty-seven dollars ($37.00), costs and disbursements in this cause in this court, and that said respondent have execution for the enforcement thereof.

Dated and signed this 15th day of July, 1898.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest:

D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees for making return	
Printer's fees	2.00
Clerk's fees, supreme court	10.00
Filing mandate	
Affidavits and acknowledgments	
Postage	
Copying returns for printer	
	$37.00

[Endorsed:] 11102. State of Minnesota, supreme court. Transcript of judgment. Filed July 15th, A. D. 1898. D. F. Reese, clerk. —— ——, attorney for —. Page No. 104, "W" Book.

STATE OF MINNESOTA, *Supreme Court,* } ss:

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original, and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court, at the capitol, in the city of St. Paul, this fifteenth day of July, A. D. 1898.

D. F. REESE, *Clerk.*

39 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1898.

WM. H. DENT, as Receiver of the First National Bank of Decorah, Iowa, Respondent,
vs.
LOUISE M. MATTESON ET AL., Def'ts; Louise M. Matteson and Charles D. Matteson, Appellants.

No. 215. Appeal from District Court, Second Judicial District, County of Ramsey.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1898, upon the return to the appeal herein:

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appeal- from, be, and the same hereby is, in all things affirmed, and that the respondent above named have judgment accordingly.

Entered July 15th, A. D. 1898.

By the court:

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

[Endorsed:] No. 11102. State of Minnesota, supreme court. Copy of order for judgment. Filed July 15, A. D. 1898. D. F. Reese, clerk. Entered on page —.

40 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1898.

TUESDAY MORNING, 9.30 O'CLOCK, *June* 28, *A. D.* 1898.

Court convened pursuant to adjournment, all the justices being present.

WM. H. DENT, as Receiver, etc., Respondent, *vs.* L. M. MATTESON ET AL., Appellants. } Cal. No., 215; Reg. No., 11102.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel — submitted to the court for decision.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE, *Clerk.*

[Endorsed:] 11102. State of Minnesota, supreme court. Copy of minutes of argument. Filed July 15, A. D. 1898. D. F. Reese, clerk.

41 [Endorsed:] No. 11102. State of Minnesota, supreme court. Wm. H. Dent, as receiver, etc., respondent, against L. M. Matteson *et al.*, appellants. Judgment-roll.

Endorsed: Filed July 15th, 1898. D. F. Reese, clerk.

42 STATE OF MINNESOTA, *Supreme Court,* } *ss:*

STATE OF MINNESOTA,
OFFICE OF CLERK OF SUPREME COURT.

I, Darius F. Reese, clerk of the supreme court, State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, judgment, judgment-roll, and all of the proceedings had in the said supreme court of the State of Minnesota in the case between William H. Dent, as receiver of the First National Bank of Decorah, Iowa, plaintiff, respondent, *vs.* Louise M. Matteson and Charles D. Matteson, defendants, appellants, including the opinion of the said supreme court therein, as appears from the original files and records, and also the opinion of said court rendered on a former appeal in said action (which opinion is referred to as having been reported in 73 N. W. R., 416), and of the demurrer and order overruling the same on which said former appeal was based.

And I do further certify and return that I have annexed to said transcript and included therewith and that the foregoing are copies of the petition for writ of error, with allowance of same, and of the assignments of error and of the bond, as the same remain on file and of record in said supreme court of the State of Minnesota, and *are* the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with proof of service thereof, and that the foregoing constitutes a true, full, and complete return to said writ of error.

Seal of the Supreme Court, State of Minnesota.

In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota, at the capitol, at St. Paul, Minnesota, this 8th day of August, A. D. 1898.

DARIUS F. REESE,
Clerk of the Supreme Court, Minnesota.

Endorsed on cover: Case No. 16,968. Minnesota supreme court. Term No., 124. Louise M. Matteson and Charles D. Matteson, plaintiffs in error, *vs.* William H. Dent, as receiver of the First National Bank of Decorah, Iowa. Filed August 29th, 1898.

PLAINTIFF'S BRIEF

No. 124.

OFFICE SUPREME COURT U. S.
FILED
OCT 24 1899
JAMES H. McKENNEY,
CLERK.

Brief of Durment for P.E.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 124.

Filed Oct. 24, 1899.

LOUISE M. MATTESON and CHARLES D. MATTESON,
Plaintiffs in Error.

vs.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa,
Defendant in Error.

Brief for Plaintiffs in Error.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 124.

LOUISE M. MATTESON and CHARLES D. MATTESON,
Plaintiffs in Error.

vs.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa,
Defendant in Error.

STATEMENT OF CASE.

General Statutes of 1894, Minnesota, contain the following provisions:

Section 5918: "The next of kin of a deceased person are liable to an action by a creditor of the estate, to recover the distributive shares received out of such estate, or so much thereof as may be necessary to satisfy his debt; the action may be against all the next of kin jointly, or against any one or more of them."

Section 5919: "In such action, the plaintiff may recover the value of all the assets received by all the defendants in the action, if necessary to satisfy his demand; and the amount of the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction can be made from such amount, on account of there being other relatives to whom assets have also been delivered."

Section 5920: "Any one of the next of kin against whom a

recovery is had, pursuant to the last section, may maintain an action against all the other relatives of the testator to whom any such assets have been paid, jointly, or any one or more of them, for a just and equal contribution, and may recover of each defendant such amount as bears the same proportion to the whole sum collected of the plaintiff, as the value of the assets delivered to such defendant bears to the value of all the assets delivered to all the relations of the deceased."

Section 5924: "Heirs and devisees are liable to an action by a creditor of a deceased person, to recover the debt, to the extent of the value of any real property inherited by, or devised to them; if such action is against the heirs, all the heirs who are liable shall be made parties to the action."

Section 5925: "But the heirs are not liable for the debt, unless it appears that the personal assets of the deceased were not sufficient to discharge it, or that, after due proceedings before the Probate Court, the creditor is unable to collect the debt from the personal representatives of the deceased, or from his next of kin, or legatee; if the personal assets were sufficient to pay a part of the debt, or in case a part thereof has been collected, as mentioned in the last section, the heirs of such deceased person are liable for the residue."

The defendant in error (plaintiff below) claiming a right to recover under some or all the foregoing statutory provisions, commenced his action against plaintiffs in error, who are the widow and son of Sumner W. Matteson, deceased, and against five others, children of the deceased. Process was served on the plaintiffs in error only. The other five persons named defendants residing without the jurisdiction of the court, were not served with process and did not appear. The allegations of his complaint are substantially these:

Sumner W. Matteson died intestate, a resident of Minnesota, on July 22, 1895. At the time of his death he owned ten shares of the capital stock of the First National Bank of Decorah, Iowa, which stock was registered in his name on the books of the bank. In September, 1895, letters of administration on the estate of the deceased were duly issued out of the Probate

Court for Ramsey County, Minnesota, and on September 30, 1895, the administrator filed an inventory of the estate, and included the said shares of stock as a part of the estate of the deceased. Such proceedings were duly had in Probate Court that in April, 1896, the final account of the administrator was settled and allowed, and a final decree duly entered distributing all the estate of the deceased (including said shares of stock) to the plaintiffs in error and the other five children of the deceased; to the widow an undivided one-third thereof and to each of the six children an undivided one-ninth thereof. Pursuant to and by virtue of said final decree on April 27th, 1896, all the estate passed out of the hands of the administrator to the distributees named in the final decree. About seven months later (on *the tenth day of November, 1896,*) the bank *became* insolvent. On November 24, 1896, the plaintiff was appointed receiver of the bank by the Comptroller of the Currency, and on January 11, 1897, levied an assessment of one hundred dollars for each share of the capital stock of the bank, payable on February 11, 1897. Said ten shares of capital stock were not transferred on the books of the bank from the name of the deceased, nor did the administrator, or the distributees, at any time take any steps to cause the stock to be transferred on the books of the bank. The distributees under said final decree received from the estate of said deceased in real estate and other property so distributed to them, and descending to them as heirs of the deceased, exceeding the value of one hundred thousand dollars, and the administrator had no funds remaining with which to pay the assessment. The administrator and the distributees were given notice of the assessment and each failed and neglected to pay it or any part of it. The prayer is for judgment against the distributees and each of them for one thousand dollars, the full assessment on

the ten shares of stock. (For complaint see Record, pages 8-11.)

The plaintiffs in error demurred to the complaint, upon the ground that it did not state facts sufficient to constitute a cause of action. The demurrer was overruled, with leave to answer in twenty days. (Record, page 7.) An appeal was taken from the order overruling the demurrer, and the order was affirmed. Thereupon, and within the time allowed by the order overruling the demurrer, the plaintiffs in error answered to the complaint, claiming that the liability for the assessment was created by and depended on the United States Statutes, and that on the facts stated in the complaint, because of the provisions of the United States Statutes, the action could not be maintained. Thereafter the defendant in error moved for judgment on the pleadings (the complaint and answer); the motion was granted, and judgment entered against these plaintiffs in error, and each of them, for one thousand ninety-one dollars and thirty-two cents. (Record, pages 12-14.) An appeal was taken from that judgment to the Supreme Court of the State, and the judgment was by that court affirmed. The judgment of affirmance (Record, page 19) is now before this court on writ of error.

Under the provisions of the Minnesota statutes the action can be maintained only to recover for the *debt of the estate* of the deceased, or for the *debt of the deceased*, and the question presented to this court is this:

Is the liability for an assessment on stock in a National Bank the debt of the deceased or of his estate, when the bank did not become insolvent, (and the debts of the insolvent bank were not incurred, nor the assessment made) until long after the estate of the deceased had been fully administered and the ownership of the stock transferred by a decree of distribution?

And as bearing upon that question:

Does United States Revised Statutes, Section 5139 apply to transfers by operation of law so that, in the absence of a transfer on the books of the bank, the assessment when made is the debt of the deceased or his estate, though the bank does not become insolvent until long after the death, and until long after full administration and distribution of the estate, of the person appearing on the books of the bank to be the owner?

On the appeal from the order overruling the demurrer these questions and also a question of pleading, were raised and discussed. The question of pleading was not raised by the answer but only the question arising under the United States Statutes. The opinion on the first appeal as printed in the Record is incorrect in its statement that plaintiffs in error contended that they were not liable as owners because they did not appear on the boooks of the bank to be such. The claim was, that the complaint did not state a cause of action against them as owners because it did not expressly allege them to have been owners of the stock at the time the bank became insolvent. (See the published opinion, 70 Minn. 521.)

SPECIFICATION OF ERRORS.

1. Plaintiffs in error claimed that only those persons who were shareholders in the national bank association at the time it became insolvent are, under the statutes of the United States, liable to pay the assessment sought to be recovered in the action; which claim was overruled and denied by the decision and judgment made and rendered in the above entitled action.

2. Plaintiffs in error claimed that the provision of the United States statutes for transferring capital stock of national banking associations on the books of such associations

does not have reference to nor apply in cases where the title is transferred by operation of law in the course of administration proceedings upon the estate of a deceased shareholder; that the death intestate of one who is a shareholder, appearing on the books of the bank to be such, and a completed administration of his estate by which the administrator is discharged and the entire estate of the deceased shareholder, including the bank stock, distributed to and vested in the persons whom the law designates, releases the deceased and his estate from liability for the assessment, notwithstanding that the stock continues registered on the books of the bank in the name of the deceased, provided the bank was solvent at the death of the shareholder and continued to be so until after the completion of the administration on his estate; that in any event such death and completed administration, the bank then being solvent, released the deceased and his estate from liability to be assessed to pay debts of the association incurred subsequent to such death and completed administration, even though the stock on the books of the association was not transferred from the name of the deceased, and no such transfer had been requested by those to whom the stock had passed; which claims and each of them were overruled and denied by the decision and judgment made and rendered in said action.

3. Plaintiffs in error claimed that the liability to pay an assessment on the shares of stock of an insolvent national bank is created and to be determined by the statutes of the United States, and that, on the facts stated in the complaint, under the provisions of the United States Statutes no such liability exists as is sought to be enforced in said action or as is adjudged in and by said judgment; which claims and each of them were overruled and denied by the decision and judgment made and rendered in said action.

POINTS AND AUTHORITIES.

The defendant in error claims that the assessment is the debt of the estate of Sumner W. Matteson, deceased, (and defendant in error therefore a creditor of the estate), although the bank did not become insolvent until sixteen months after the death of the deceased and until six months after his estate had been fully administered, the administrator discharged, and the title and possession of the estate of the deceased (including the bank stock) transferred to his heirs and next of kin by the decree of a court of competent jurisdiction. Plaintiffs in error claim that the assessment is the debt of the next of kin who were the owners of the stock when the bank became insolvent, and that each, because of such ownership, is indebted individually for the assessment on the amount of the stock he owned, but deny that the assessment is a debt of their deceased ancestor making them liable for the full amount of the assessment to the extent of the value of assets received from the estate of their ancestor.

If the claim of the defendant in error can be sustained on the allegations of the complaint, then the judgment must be affirmed, because the action is properly brought under the Minnesota statutes:

General Statutes, 1894.

Section 5918: The next of kin of a deceased person are liable to an action by a creditor of the estate, to recover the distributive shares received out of such estate, or so much thereof as may be necessary to satisfy his debt; the action may be against all the next of kin jointly, or against any one or more of them.

Section 5919: In such action, the plaintiff may recover the value of all the assets received by all the defendants in the action, if necessary to satisfy his demand; and the amount of

the recovery shall be apportioned among the defendants, in proportion to the value of the assets received by each; and no allowance or deduction can be made from such amount, on account of there being other relatives to whom assets have also been delivered.

Section 5920: Any one of the next of kin against whom a recovery is had, pursuant to the last section, may maintain an action against all the other relatives of the testator to whom any such assets have been paid, jointly, or any one or more of them, for a just and equal contribution, and may recover of each defendant such amount as bears the same proportion to the whole sum collected of the plaintiff, as the value of the assets delivered to such defendant bears to the value of all the assets delivered to all the relations of the deceased.

If the position taken by the plaintiffs in error is the correct one, then the recovery must be had in several actions at law to recover from each the amount of the assessment on the stock owned by him, and the judgment must be reversed.

The United States statute imposes the liability for an assessment on the *shareholder*, and on no other person. The liability for the assessment is the personal indebtedness of the shareholder, except where the shareholder holds the stock in a representative capacity and then he is liable only in his representative capacity. When the assessment is made it constitutes no lien upon the shareholder's property. The language of the statute is: U. S. R. S. 5151:

"The *shareholders* of every national banking association shall be held *individually* responsible, * * * for all contracts, debts, and engagements of such association *to the extent of the amount of their stock therein*," etc.

Under the letter of the statute it is only the *shareholder* who is liable for the assessment. No deceased person can be liable for an assessment. So far as the deceased is concerned the liability, if any, must be the liability of his estate. His estate

is liable only in two cases: (a) Where the administrator or executor *holds* the stock, and has estate or funds of the deceased in his possession (U. S. R. S. 5152). (b) Where the deceased at his death was indebted for the assessment, in which case it is a debt of the deceased to be paid as other debts owed by him at the time of his death.

The estate of the deceased in this case is not liable on the ground that the administrator *held* the stock and had estate or funds of the deceased in his hands, because the estate had been fully administered, the final account of the administrator settled and allowed, and final decree entered passing the title of all the property (including this stock) to the next of kin and distributing the estate to them. The complaint alleges that the possession of all the property (including the stock) had passed from the administrator, so that he had no assets with which to pay the assessment. The facts alleged show that the administration of the estate had closed, that the administrator had been discharged, or become *functus officii,* that the title to the estate had passed to the next of kin and heirs, that the *estate* of the deceased had ceased to exist, on April 27, 1896, and that it was not until November 10, 1896, that the bank became insolvent. (See complaint, Record, pages 8-11.)

That there was no estate of the deceased, was no administrator, and that the ownership of the stock and all other the estate of the deceased had passed to the heirs and next of kin on April 27, 1896, is shown by the following authorities:

General Statutes, 1894, Minnesota.

Section 4639: "When the estate is fully administered, the executor or administrator shall petition the Probate Court for an order fixing the time and place in which it shall examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law. The final account shall be filed in the Probate Court at the time of filing said petition."

Section 4641: "* * * If from such examination the account is found just and correct the Probate Court shall allow and settle the same, and upon satisfactory evidence shall determine the rights of the persons to the residue of said estate and, unless partition is asked for and directed as hereinafter provided, make a decree accordingly, assigning said residue to the persons thereto entitled by law."

Section 4642: "In such decree the court shall name the persons and proportion or parts to which each is entitled, and if real estate, give a description as near as may be of the land to which each is entitled; and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same * * *"

40 Minn. 296, State ex rel. Dana v. Probate Court.

(Page 299): "The object of the application on the part of the acting administrator was to submit his final account and close the administration. The order was evidently so intended, and must be construed as a final order discharging the administration of the estate."

(Page 299). "The land descended to the heirs, subject to the claims of administration upon it. The effect of a decree assigning the real estate to the heirs is simply to discharge it from the administration, and, of course, the final discharge of the administration must discharge the lien of the creditors."

47 Minn. 20, Stackhouse v. Berryhill.

(Page 22). "Here the proceedings had terminated, and a final decree had been entered, when the will was presented to the Probate Court. The letters of administration were beyond re-call, for their mission had ended."

61 Minn. 91, Schmidt v. Stark.

(Page 92). "The probate code neither authorizes nor provides for an assignment of any part of the estate of a deceased person until after the estate is fully administered. It contemplates but one degree of distribution, by which the entire residue of the estate shall be assigned to those entitled to it, specifying the proportion or part to which each is entitled. G. S. 1894, Sections 4639-4642. Read in the light of the statute and of the admissions of the answer, we think the complaint would

fairly admit of being construed as alleging that all this had been duly done, and that the proportion of the estate assigned to plaintiff was an undivided fifth. If this was the state of facts, the jurisdiction of the Probate Court over the property had ended. The effect of a decree of distribution is to transfer the title to the personalty, and the right of possession of the realty from the personal representatives to the distributees, devisees, or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the personal representative if he does not deliver it to them. If such an action is necessary, resort must be had to some other forum, for the Probate Court has no further jurisdiction."

Whatever may be the rule in other jurisdictions, in Minnesota, under the "Probate Code," as settled by the decisions of the highest court, after a final decree of distribution there is no estate of a deceased person, and there is no administrator who can hold the stock, but the property of the estate has become the individual property of those named in the final decree as distributees. It follows then, that if this judgment can be sustained it is only upon the ground that the assessment is the debt or liability of the deceased.

It seems clear to us that the assessment is not in any sense the debt of the deceased, and that it cannot be held to be a debt of his estate upon the ground that it is a claim against the deceased. We understand that the claim against the stockholder, the liability to pay the assessment, arises upon the insolvency of the bank, and that it rests upon those who are shareholders at the time the bank becomes insolvent. This necessarily is the case, because until insolvency occurs there is no right in any person to make the claim against the stockholder, and any shareholder until insolvency occurs may in good faith transfer his shares and thereby be relieved from payment of any future assessment. The statute creating the liability contemplates

that those who are shareholders at the time of the insolvency of the bank shall pay the assessment, as is evident from the fact that, though some of the debts existing at the time it becomes insolvent may have been incurred at a time when one not a shareholder at the date of the insolvency held stock, there is no method of apportioning any part of the assessment to him. In short, the assessment is the debt or liability *only of the actual owner of the stock, or of him who is estopped to deny his ownership, at the time the insolvency occurs.* Although perhaps it has not been directly adjudicated that the liability for the assessment rests only upon those who are shareholders at the time the insolvency occurs, all the decisions assume that it is so.

The assessments made by the Comptroller are always stated to be assessments against the shareholders who were such at the time the bank became insolvent. The complaint in this action alleges that this particular assessment was "upon each and every share of the capital stock of said banking association *held or owned* by each of the *said shareholders* respectively, *at the time of its failure, towit:The tenth day of November, A. D. 1896.*" (See Record, p. 8, folio 18.)

In 17 Fed. Rep. Irons v. Manufacturer's National Bank, on page 316, Judge Blodgett says:

"It seems, therefore, quite clear to me that those who are shareholders when a bank suspends must bear the burden imposed by the law in favor of creditors."

And in 169 U. S., Stuart v. Hayden, this court says (Page 8):

"The right of creditors of a national bank to look to the individual liability of shareholders, to the extent indicated by statute, for its contracts, debts and engagements, attaches when the bank becomes insolvent, and the shareholder cannot, by transferring his stock, require creditors to surrender this security," etc.

It is very clear that this assessment cannot be held to be a debt of the estate of the deceased, upon either of the grounds upon which such claim can be sustained. Neither the administrator nor the deceased held the stock when the liability arose, and the assessment was at no time a claim against the administrator, the estate, nor the deceased. Nor it is claimed that any debt of the insolvent bank was incurred prior to the final distribution of the estate of the deceased.

This precise point involved in this case seems not to have been passed upon directly in any case, unless it was in 32 Fed. Rep. 130, Witters v. Sowles, but numerous cases bear out the contention of plaintiffs in error.

The case of Witters v. Sowles, 32 Fed. Rep. 130, is in point. In that case as in this, the debts of the bank were not shown nor claimed to have been incurred during the life of the deceased, and the assessment was held not to be a contingent claim against the deceased for which his property could be followed into the hands of the heirs. In that case, a large part of the stock (in this the whole of it) had passed out of the hands of the executor, before the debts of the bank were shown to have been incurred, and it was held that the liability for the assessment on the stock which did not remain in the hands of the executor did not rest upon the estate, but that it rested upon the owners of the stock, and that they were not chargeable in an action for assets received, but could be charged only in an action to recover from them as owners, except as to stock remaining in the hands of the executor at the time the bank became insolvent. The statutes of the State on which that action was based seem to be substantially the same as the statutes of Minnnesota on which the defendant in error in this case relies to support his action.

In 60 Fed. Rep., Wickham v. Hull, Judge Shiras says (page 328):

"Under the provisions of this section (U. S. R. S. 5151) there existed a personal liability against O. N. Hull for all contracts, debts, and engagements of the bank in force at the date of his death. After his death no additional liability could be created against O. N. Hull personally by the creation of new debts or obligations on the part of the bank."

(Page 329):

"Under the ruling of the Supreme Court in that case (Richmond v. Irons), if at the time of the death of O. N. Hull there existed a personal liability against him under the provisions of Section 5151, Rev. St., such liability would survive against his executors; and, if the liability was created after his death, and while the shares of stock formed part of his estate, then, under the provisions of Section 5152, the estate became responsible for such liability, and under either state of facts a claim would exist against the estate."

But in the case now here for determination neither state of facts exists, because the stock (and the entire estate of deceased) had passed to others and the administrator had been discharged April 27, 1896, and the bank did not become insolvent until November 10, 1896, and no claim is made that any debts of the bank were incurred until subsequent to April 27, 1896.

In the case of Wickham v. Hull (supra) the judgment was filed in the Probate Court of the state for allowance, the administration of the estate not being closed. The case then went to the Supreme Court of the state to determine whether the claim was barred because not filed in time. (71 N. W. Rep. 352.) The court held it not barred and for these reasons:

"In Savery v. Sypher, 39 Iowa 675, this court held that the limitation applies only to claims existing at the time of the decedent's death and not to debts subsequently incurred by the estate."

"This statutory liability (U. S. R. S. 5151, 5152) is not in

favor of the bank, but of its creditors, and does not arise until, by reason of the insolvency of the bank, it did not have sufficient assets out of which payment of its liabilities could be enforced. Under the law this liability may be enforced through the receiver for the benefit of creditors, and the liability now sought to be enforced is against the estate, under the provisions of said section 5152."

"This claim did not exist at the time of Mr. Hull's death, but has arisen since, as a liability against his estate, and is therefore within the rule announced in Savery v. Sypher, supra."

In 71 Fed. Rep. 321, Blackmore v. Woodward (C. C. A. Sixth Circuit), the court said that in case of a special bequest of National Bank stock, even if the administrator must, under the will, retain the title, the beneficial ownership is in the legatee, and she must pay the assessments. Even if judgment should be given against the administrator he would have to satisfy it, not out of the general estate, but out of funds belonging to the legatee.

In 71 Fed. Rep. 256, Parker v. Robinson, (C. C. A. First Circuit), at the death of the testator the bank was solvent. The executor took the certificate of shares into his possession and inventoried the shares as a part of the assets of the estate. The court held that the executor thereby acquired the legal title to the stock, became in law the owner of it, and so holding it when the bank became insolvent was liable as a shareholder under U. S. R. S. 5151.

In the case now here for determination, the administrator treated the stock in the same way. If the bank had become insolvent before the title had passed from the administrator by virtue of the final decree in the Probate Court, the administrator would have been liable for the assessment as a shareholder, and the estate in his hands would have been taken to

pay it. But the estate would not have been liable for it as a debt or claim against the deceased. In other words the administrator having taken the title while the bank was solvent, there was thereafter no room to claim that the assessment was a claim against the deceased. And the title having passed from the administrator to the next of kin by virtue of the final decree while the bank was yet solvent, there was thereafter no room to claim that the administrator was a shareholder and the estate therefore liable. But the liability was upon the next of kin *as shareholders.*

In 86 Fed. Rep. 357, Brown v. Ellis, the bank became insolvent while the estate was yet in the hands of the executor. When suit was brought against the executor the defense was that the time to present claims against the deceased had expired. The court said (page 358):

"The claim did not, as shown, so accrue in the life of J. R. Ellis that commissioners on his estate would have jurisdiction of it. It never was a claim against him."

In 87 Fed. Rep. 840, Tourtelot v. Finke, the insolvency of the bank occurred while the estate was in the hands of the executor. The defense to the suit was that the stock was then the individual property of the executor. The court says (page 841):

"The decisive question in the case is: Who was the owner of this bank stock at the date of the failure of the bank and the order of the comptroller putting it in course of liquidation? It is urged for the defendant by her counsel that, upon the facts stated in this paragraph of the answer, Mrs. Finke was the owner of it in her own right, and that it was not a part of the assets of the estate. On the other hand, for the plaintiff it is claimed that it is affirmatively shown that this bank stock was a part of the estate of John B. Finke," etc.

It was found that the stock was a part of the estate, and not the individual property of Mrs. Finke.

We submit that the decisive question in the case now before the court for decision is, "Who was the owner of the stock at the date of the failure of the bank?" The complaint in the action answers the question conclusively, that it was owned by the next of kin of Sumner W. Matteson. It follows that they are liable for the assessment as owners and not as for assets received from his estate.

The only answer which defendant in error makes to the porposition advanced on behalf of plaintiffs in error is: The stock is registered on the books of the bank in the name of Sumner W. Matteson, and as long as it so appears he is liable, and, he being liable, this action will lie against persons receiving assets from his estate.

We are unable to understand how the entry on the bank register can make the dead, living so that he may be affected by or rendered liable for the assessment. Nor, if it could have such an effect, can we understand how it would avail defendant in error when his cause of action depends on Sumner W. Matteson being dead, and his complaint alleges him to be dead. Nor do we see how the entry on the bank register can operate to continue an administrator in office or an estate in being, so as to render it liable for the assessment, when, as his own complaint alleges, the administrator is out of office and the estate has ceased to exist as such by virtue of the final judgment of a court of competent jurisdiction.

But counsel for defendant in error is in error in his opinion that the fact of the stock being registered on the books of the bank in the name of Sumner W. Matteson is material in this action. (a) The statute which creates the liability is U. S. R. S. 5151, and there is nothing in it which makes registry necessary to liability, nor which makes registry any test of liability

or non liability. (b) The section with reference to transfers being registered (U. S. R. S. 5139) clearly contemplates a voluntary transfer, and not a transfer by operation of law. The reason for the requirement does not exist in cases like the present, and therefore the statute does not apply. The provision mainly, and, so far as the defendant in error can claim under it, entirely, is for the benefit of creditors, to enable them to know to whom they may look in case of insolvency of the bank. That presupposes knowledge or inquiry upon the part of the creditor as to the condition of the registered owner. Such knowledge or inquiry, if of such character as would justify one in becoming a creditor of the bank in reliance upon the liability of the shareholder for the payment of his claim, would necessarily disclose the death of a deceased shareholder. (c) A dead man cannot be a shareholder, and a dead man cannot cause his stock to be transferred, and the law does not require an impossible thing.

The decisions have pretty well established that the absence of the name of the owner of shares from the bank register will not be any defense to an action to recover from him an assessment on shares of stock owned by him, and that the fact of one's name appearing on the bank register as a shareholder does not of itself make him liable for the assessment on the stock appearing by the books of the bank to belong to him. The result of the decisions is this: The actual owner of the shares is liable for the assessment in all cases. If one has transferred his shares in fraud of creditors of the bank, he remains liable for the assessment even though the transfer has been made on the books of the bank. If one holds himself out as a stockholder, and purposely or negligently permits his name to be borne on the books of the bank as a stockholder, he, as against creditors of the bank, is estopped to deny that he is such stock-

holder. In short, one who appears by the books of the bank to be a shareholder, but who in fact is not such, is not held to pay the assessment, unless his conduct has been such as to estop him to deny that he is a stockholder.

Such estoppel cannot be predicated upon the fact that a transfer by operation of law in administration proceedings was not noted on the books of the bank. The man in whose name the stock stands on those books was dead long before the liability for this assessment arose and is not in any way to blame for such failure to transfer. It was not the duty of the distributees to cause the transfer to be made. No one is injured by their failure to do so, even if it were their duty, because they as such owners are liable to the same extent and in the same manner that they would be if the transfer had been made on the books of the bank. No fraud upon the creditors can be predicated upon their failure to have the stock transferred on the books of the bank, because their liability would be the same, as actual owners of the stock, whether or not they appear on the books of the bank to be such.

The reason for the requirement to transfer on the books of the bank, the effect of the provision, and the extent to which the bank can regulate it are considered in 103 U. S. 809, Johnson v. Laflin. The court in speaking of the power of the bank to prescribe the manner of transfer, says:

"Its power in that respect, however, can only go to the extent of prescribing conditions essential to the protection of the association against fraudulent transfers, or such as may be designed to evade the just responsibility of the stockholder."

17 Blatch. 259, Davis v. Stevens, is a case where the actual owner of the stock was held liable though his name never had appeared on the books of the bank as a shareholder.

In 99 U. S. 628, National Bank v. Case, one who had trans-

ferred the shares on the books of the bank to another, was held for the assessment, because the actual owner. Such also was the case in 107 U. S. 251, Bowden v. Johnson.

In 118 U. S. 665, Whitney v. Butler, the person in whose name the stock appeared on the bank register, was held not to be liable for the assessment, because after his sale the certificate, with a power to transfer endorsed on it, was delivered to the bank.

In 165 U. S. 606, Pauly v. State Loan & Trust Co., the cases are reviewed, and the rules applicable are stated.

86 Fed. 547, Hubbell v. Houghton, is an instructive opinion on the effect of the provisions of statute with reference to transfers on the books of the bank.

In 86 Fed. Rep. 972, Lucas v. Coe, Judge Coxe says (page 973):

"The fact that the defendant is responsible and the *cestui que* trust presumably irresponsible is a matter of no moment. There is nothing requiring a shareholder in a national bank to be solvent and these shares may be held alike by the millionaire and the pauper. The question for the receiver in making an assessment is, who owns the shares, not who is best able to pay?" (Page 974) * * * "The effort of the court in these cases should be to ascertain who is the actual owner of the shares and to hold him, releasing the apparent owner in all cases where he has done nothing to mislead or deceive the bank. In arriving at the true ownership the court is permitted to look beyond the books and papers and establish the truth by extrinsic evidence."

The opinion of the Supreme Court of Minnesota is to be found in 70 Minn. 519, Dent v. Matteson. It seems to us to be opposed to the provisions of the United States statutes creating and governing this liability and assessment, and to be opposed

to the federal decisions construing those statutes.

It says the claim was a contingent one, which did not become absolute until the time to file claims had expired and the estate had been distributed, and therefore the action can be maintained. According to the provisions of Sections 5151, 5152, and the decisions hereinbefore cited, the assessment was never at any time a claim, actual or contingent, against the deceased or his estate. The cases cited by the court as authority for this proposition were cases of ordinary contract obligations; one where the defendant had signed a guardian's bond as surety, and the other a stock subscription where he had agreed to pay the purchase price of the stock. In those cases, from the time the defendant entered into the contract, there was an actual contract obligation, to an ascertained, designated, obligee, although the amount of the damages had not been liquidated. The claim rested primarily and solely on the promise of the deceased. Such a claim would be held to be the obligation of the deceased, and is a very different thing from the liability of the shareholder to pay an assessment on this bank stock. The obligation to pay the assessment does not rest primarily and solely, if at all, on the promise of the shareholder to pay the assessment. It cannot fairly be said to rest upon his promise at all. It is a burden incident to the ownership of the stock, cast upon him solely by the statute. The obligation to pay the assessment no more rests upon his promise to pay, than does the liability to pay a tax on his personal property. The obligation of the shareholder to pay the assessment rests no more on his promise, is no more his contract, than would be his obligation to pay for sheep killed by his dog in case of a statute providing that every owner of a dog shall be individually responsible to the owner for the value of all sheep killed by his dog. In cases such as the court cited, the obligation rests

upon, in fact is, the promise of one person, given to an ascertained, designated, other person, binding the first *personally* to the other for the performance of the obligation. It is purely a contractual obligation and at all times is subject to the control of the parties to the contract. In case of the assessment the obligation is not the promise of the shareholder, nor is the obligation to an ascertained or designated person (at least not until the bank becomes insolvent), nor is it at all within the control of the shareholder and the person entitled to the benefit of the assessment. It is not strictly, if at all, a contract obligation, but is merely incidental to the ownership of the stock, and is purely statutory. It cannot be a claim against any person except the shareholder who is such at the date of the insolvency.

Certainly the ownership of the stock alone gives no claim against the shareholder. If there be no debts there can be no liability of the shareholder, neither actual or contingent. It at least requires that there shall be creditors of the bank who might resort to the shareholders before there can be any liability, contingent or otherwise. It is not alleged in the complaint, nor claimed, that there were any such in this case prior to the final settlement of Sumner W. Matteson's estate in the Probate Court.

In 32 Fed. Rep., Witters v. Sowles, on page 137, the court says:

"The shareholders are liable only by force of the statute, which declares that they shall be held individually responsible for all contracts, debts and engagements of the bank, to the extent of the par value of their stock. Rev. St. 5151. The liability of the shareholder attaches when the contracts are made, debts are created, or engagements are entered into by the bank, and it is an original liability made by the law a part of them. (Citations.) The testator did not become liable on account of the stock, except for such debts, contracts, and engagements

as the bank became liable for during his lifetime. The ownership of the stock would not in itself create any, not even a contingent, liability; but ownership of stock, and creation of a liability by the bank, together, would create a liability of the shareholder contingent upon the discharge by the bank of its liability. Both are necessary to the creation of a contingent claim against a shareholder or his estate."

In 89 Fed. Rep. 853, Scott v. Latimer (C. C. A. Eighth Circuit), the court says:

"It is thus made clear that the liability sought to be enforced in this case is not dependent upon the terms, or in fact upon the existence, of a contract of subscription to the capital stock of the bank, but it is a liability imposed by statute in favor of the creditors, and it is a liability, as already said, which cannot be modified or released by any action on part of the corporation."

In 118 U. S. 634, Delano v. Butler, this court says:

"Under Section 5151 the individual liability does not arise except in case of liquidation, and for the purpose of winding up the affairs of the bank. The assessment under that section is made by authority of the comptroller of the currency, is not voluntarily, and can be applied only to the satisfaction of the creditors equally and ratably."

In 79 Fed. Rep., First Nat. Bank of Concord v. Hawkins, (C. C. A. First Circuit), on page 53, the court says:

"There can be no substantial doubt that, whether the purchase of the stock was authorized or not, the plaintiff in error was, after its transfer, by the force of the transaction, its owner, and that no one else could stand as such. Under these circumstances, the liability sought to be enforced here arises by force of the statute, and is not contractual."

The case of 133 U. S. 138, Keyser v. Hitz, is cited as authority, and properly so.

In 17 Fed. Rep., Irons v. Manufacturer's National Bank, and in 169 U. S., Stuart v. Hayden, cited earlier in this brief, the opinions state that those who are shareholders at the date of

the insolvency must bear the burden of the assessment, and that the right of the creditor to look to the individual liability of the shareholder, attaches when the bank becomes insolvent.

The Supreme Court of Minnesota also says the shareholder's liability is a continuing one, continuing until a transfer of his stock is made on the books of the bank, or such transfer properly demanded, whether the shareholder be dead or alive, and for all debts of the bank, whether contracted before or after his death, regardless of whether the bank becomes insolvent before or after his death. This doctrine is inconsistent with the United States statutes creating and regulating this liability, and is not in harmony with the decisions of other courts construing those statutes. Moreover, it is unreasonable. A single illustration will suffice. Under such rule, a shareholder may die, his administrator may inventory the stock, sell it to a stranger, delivering the certificate of shares to him, who may neglect to cause a transfer to be entered on the books of the bank. The remainder of the estate may be distributed to the heirs, and the bank becoming insolvent five years later, the heirs held to pay the assessment. Yet they never would have had control or possession of the stock, nor have known that it remained registered on the books of the bank in the name of their ancestor, and in the meantime might have paid taxes and carrying charges on the estate received by them to its full value. The case put is extreme, but it shows the unreasonableness of the rule.

The Supreme Court of Minnesota also says it cannot sustain the contention of plaintiffs in error, because, if the law be as they contend, it would be easy to evade all liability after the stock-

holder's death, and because, according to their theory, the estate might receive all benefits and escape all burdens connected with the stock. The conclusion arrived at by the court does not follow. The owners of the stock would always be liable for the assessment, as owners, each for the stock he owns. The fact that an estate might have received the benefits of the dividends would not afford any ground to hold that those who succeed to the property of the estate should be liable for the assessment, regardless of the ownership of the stock, in case the bank should long after become insolvent, any more than the fact that a living shareholder receives dividends would warrant a court in holding him for the assessment on stock transferred by him long before the insolvency of the bank. This part of the court's opinion is due to the fact that the court fell into an error when first writing the opinion, which it subsequently corrected. This part of the opinion was written to suit another state of facts. The opinion as originally written, stated that plaintiffs in error claimed that they could not be held as owners because they were not registered as such on the books of the bank. The conclusion of the court above set out was based on that alleged claim upon the part of plaintiffs in error. On it being called to the attention of the court that plaintiffs in error had made no such claim, but had claimed that the owner was liable though not registered as such, it corrected the opinion by stating correctly the claim of plaintiffs in error, i. e., that they could not be held, in this action, as owners, because it did not appear that they were still owners of the stock at the date of the insolvency of the bank. But it did not correct the conclusions based upon the incorrect statement of the position taken by plaintiffs in error. The opinion as originally written is printed in the record at pages 517-18. A comparison of that with the published opinion (70 Minn.

519) will show the difference between the opinion as originally written and as corrected by the court.

This part of the court's opinion is well answered in 165 U. S. Pauly v. State Loan and Trust Company, pages 622, 623, where the court disposes of the suggestion that if the pledgee is not held liable as a shareholder, in respect of the shares standing in its name as pledgee, then no one is liable to assessment as owner of the stock, by saying that the actual owners are liable though not appearing as such upon the books of the bank.

The judgment given by the court below makes each of these plaintiffs in error liable for the full amount of the assessment, and will require them, or one of them, to pay it, and then to go into foreign jurisdictions and sue for contribution. Under the law they are liable in the proper action, Louise M. Matteson only for one-third of the assessment, and C. D. Matteson only for one-sixth of the assessment. The defendant in error has no right, legal or equitable, to shift the burden of collecting the assessment from the other owners to the shoulders of these plaintiffs in error, nor to require them to pay the debts of the other owners. We submit that the judgment must be reversed.

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